

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 3:20-cv-00158-MMD-WGC

Plaintiff:

ORDER

\$1,106,775.00 IN UNITED STATES CURRENCY.

Defendant.

OAK PORCELLI, *et al.*,

Claimants.

I. SUMMARY

This is a civil forfeiture action arising from a traffic stop on Interstate 80 (“I-80”) in Washoe County, Nevada. Plaintiff United States of America (“government”) has filed a verified complaint for forfeiture *in rem* seeking the forfeiture of \$1,106,775.00 United States currency (the “Currency”) found in a rental car during a traffic stop. (ECF No. 1 (“Complaint”).) The rental car driver, Oak Porcelli, and his passenger, Gina Pennock (together, “Claimants”), oppose this forfeiture action. (ECF Nos. 12, 13.)

Claimants assert that they have standing to contest the seizure of the Currency and moved to suppress evidence obtained from the traffic stop. (ECF No. 14 (“Suppression Motion”).) In response, Plaintiff filed a motion to stay the Suppression Motion. (ECF No. 17 (“Stay Motion”).)

In the meantime, Plaintiff served Claimants with special interrogatories under Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Supplemental Rules” or “Supp. R.”) G(6), seeking information regarding Claimants’

111

1 standing,¹ which is the threshold disputed issue between the parties. (ECF No. 28-1 at
 2 13-33, 61-70.) Porcelli answered the interrogatories. (*Id.* at 34-48.) Unsatisfied with
 3 Porcelli's answers, Plaintiff moved to compel Porcelli to adequately respond to the
 4 interrogatories (ECF No. 28 ("Compel Motion")), and also moved to conditionally strike
 5 Porcelli's claim (ECF No. 29 ("Strike Motion")). Additionally, Plaintiff filed a motion to
 6 stay discovery until the issue of standing is resolved. (ECF No. 30 ("Stay Discovery
 7 Motion").) United States Magistrate Judge William G. Cobb granted Plaintiff's Compel
 8 and Stay Discovery Motions. (EFC No. 38.) Claimants filed an objection to Judge
 9 Cobb's order. (ECF No. 39 ("Objection").)²

10 This order addresses these pending motions and the Objection. The Court
 11 overrules Claimants' Objection because they have not demonstrated that Judge Cobb
 12 clearly erred as further discussed below. Recognizing that standing remains a threshold
 13 issue in this forfeiture action, the Court additionally denies Plaintiff's Strike Motion
 14 without prejudice to give Porcelli an opportunity to cure his special interrogatory
 15 responses. Accordingly, the Court denies Claimants' Suppression Motion without
 16 prejudice, and denies Plaintiff's Stay Motion as moot.

17 **II. BACKGROUND**

18 Driver Oak Porcelli and passenger Gina Pennock were driving a rental car on I-
 19 80 near Reno, Nevada on the afternoon of November 19, 2019. (ECF No. 14-1 at 1.)
 20 The rental car had an out-of-state Florida license plate. (ECF No. 14 at 3.) A Nevada
 21 Highway Patrol officer ("Officer") initiated a traffic stop, noting the rental car was
 22

23 ¹Claimants must establish both statutory and Article III standing to challenge an
 24 *in rem* civil forfeiture action. See *United States v. 6107 Hogg Rd.*, Case No. 1:11-cv-
 25 00300-CWD, 2017 WL 1013868, *4 (D. Idaho Mar. 14, 2017). "To establish statutory
 26 standing in a civil forfeiture action, the claimant must comply with the procedural
 27 requirements of 18 U.S.C. § 983(a)(4), as well as those in the Supplemental Rules . . .
 28 To have Article III standing to challenge an *in rem* civil forfeiture action, a claimant must
 establish an injury in fact, a causal connection between the injury and the conduct
 complained of, and that it is likely the injury will be redressed by a favorable decision."
Id. at *5-6 (citing *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 637 (9th Cir.
 2012)).

²Plaintiff filed a response to Claimants' Objection. (ECF No. 40.)

1 following too closely behind another automobile. (ECF Nos. 1 at 3; 14-1 at 2.) The
 2 Officer asked for documentation which Claimants produced. (ECF No. 1 at 3.) The
 3 Officer asked Porcelli to step outside the car; Porcelli complied. (*Id.*) The Officer then
 4 asked Porcelli if there were any drugs, weapons, and humans³ in the car. (*Id.* at 4; ECF
 5 No. 14-1 at 2.) Law enforcement subsequently conducted a search of the rental car and
 6 found a vape pen, along with the Currency. (ECF No. 1 at 5-6, 9.) On November 22,
 7 2019, the Currency was deposited into the United States Marshal Service's Seized
 8 Asset Deposit Fund Account. (*Id.* at 2.)

9 Plaintiff claims that the Currency is subject to forfeiture to the United States
 10 under 18 U.S.C. §§ 981(a)(1)(A) and (C), and 21 U.S.C. § 881(a)(6). (*Id.* at 3.) Plaintiff
 11 alleges the Currency is being "furnished or intended to be furnished in exchange for a
 12 control substance or listed chemical in violation of Subchapter I of the Controlled
 13 Substances Act, 21 U.S.C. § 801, *et seq.*, and is subject to forfeiture." (*Id.* at 15.)
 14 Claimants timely filed their verified claims opposing the forfeiture. (ECF Nos. 12, 13.)
 15 Porcelli claims "an ownership and possessory interest in, and the right to exercise
 16 dominion and control over, all of the [] property taken from his [rental] vehicle, including
 17 from his luggage and other items." (ECF No. 12 at 1.) Pennock claims "a possessory
 18 interest in, and the right to exercise dominion and control over all of the [] property taken
 19 from her possession, including from her luggage and other items." (ECF No. 13 at 1.)

20 **III. CLAIMANTS' OBJECTION**

21 **A. Review of the Magistrate Judge's Pretrial Rulings**

22 Magistrate judges are authorized to resolve pretrial matters subject to district
 23 court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. §
 24 636(b)(1)(A); see also Fed. R. Civ. P. 72(a); LR IB 3-1(a) ("A district judge may
 25 reconsider any pretrial matter referred to a magistrate judge in a civil or criminal case

27 ³The Complaint states that Plaintiff also asked Porcelli about "illicit currency."
 28 (ECF No. 1 at 4.) Porcelli's declaration does not include illicit currency in describing
 what the Officer asked him about. (ECF No. 14-1 at 2 ("asking me about drugs,
 weapons, and humans/bodies.").)

1 pursuant to LR IB 1-3, where it has been shown that the magistrate judge's order is
 2 clearly erroneous or contrary to law."). "A finding is clearly erroneous when although
 3 there is evidence to support it, the reviewing body on the entire evidence is left with the
 4 definite and firm conviction that a mistake has been committed." *United States v.*
 5 *Ressam*, 593 F.3d 1095, 1118 (9th Cir. 2010) (quotations omitted) (citing *Concrete Pipe*
 6 & *Prods. v. Constr. Laborers Pension Tr.*, 508 U.S. 602, 622 (1993)). A magistrate
 7 judge's pretrial order issued under § 636(b)(1)(A) is not subject to *de novo* review, and
 8 the reviewing court "may not simply substitute its judgment for that of the deciding
 9 court." *Grimes v. City & Cty. of S.F.*, 951 F.2d 236, 241 (9th Cir. 1991) (citing *United*
 10 *States v. BNS, Inc.*, 858 F.2d 456, 464 (9th Cir. 1988).

11 **B. Compel Special Interrogatories**

12 Claimants argue in their Objection that Judge Cobb should have denied Plaintiff's
 13 Compel Motion. (ECF No. 39 at 2-8.) Citing generally to *United States v. \$133,420.00*,
 14 672 F.3d 629 (9th Cir. 2012), Claimants assert the Court "erroneously conflates the
 15 distinction between a claimant who . . . asserts an *ownership* interest in the defendant
 16 property with an [sic] claimant who asserts a *possessory* interest in the defendant
 17 property." (*Id.* at 2 (emphasis added).) Claimants emphasize this distinction to argue
 18 that a claimant with an ownership interest need merely to declare their interest to have
 19 standing. Claimants raised this same argument before Judge Cobb at the motion
 20 hearing on August 11, 2020. (ECF No. 38 at 3.) In granting the Compel Motion, Judge
 21 Cobb reasoned that Claimants' contention that special interrogatories could not address
 22 issues beyond identity when a claimant asserts ownership interest would "essentially
 23 eliminate the availability of Supplemental Rule G(6) special discovery." (*Id.* at 5.)

24 Supp. R. G(6)(a) provides that "[t]he government may serve special
 25 interrogatories limited to the claimant's identity and relationship to the defendant
 26 property without the court's leave at any time after the claim is filed and before
 27 discovery is closed." Supp. R. G(6)(a) (emphasis added). The purpose of this rule is to
 28 allow the government to file limited interrogatories to gather information that bears on

1 claimant's standing. See *\$133,420.00*, 672 F.3d at 635; see also Supp. R. G Advisory
 2 Comm. Notes, Subdiv. (6). A "claimant impair[s] the truth-seeking function of the judicial
 3 process by failing to provide a Special Interrogatory response that address the
 4 claimant's identity and relationship to the defendant property." *United States v.*
 5 *\$295,726.42*, 279 F. Supp. 3d 1050, 1055 (C.D. Cal. 2018) (quotations omitted) (citing
 6 *\$133,420.00*, 672 F.3d at 638, 642). Porcelli's special interrogatory response stated he
 7 "own[s] all" and has "a right to possess" the Currency but failed to provide much else in
 8 way of his relationship to the Currency (see ECF No. 28-1 at 39). This response thereby
 9 impairs the "truth-seeking function" of Supp. R. G(6) and hinders on Plaintiff's ability to
 10 gather information on Porcelli's standing. The Courts finds that Judge Cobb did not
 11 clearly err in granting the Compel Motion.

12 C. Stay Discovery

13 Claimants argue that two key considerations were ignored in granting Plaintiff's
 14 Stay Discovery Motion. First, Porcelli's failure to adequately respond to special
 15 interrogatories does not excuse Plaintiff from responding to Porcelli's discovery
 16 requests. (ECF No. 39 at 10-11.) Second, it is a "disservice" to judicial economy to stay
 17 or delay the adjudication of Claimants' Suppression Motion to address Plaintiff's Strike
 18 Motion. (*Id.* at 11-12.) Plaintiff counters that Judge Cobb correctly determined that good
 19 cause exists to stay general discovery pending Porcelli's response to the special
 20 interrogatories and the resolution of Claimants' standing. (ECF No. 40 at 15.) Moreover,
 21 Plaintiff contends that Judge Cobb was correct in sequencing litigation "such that
 22 standing would be resolved ahead of general discovery and litigation of suppression
 23 and merits issues." (*Id.* at 18.) The Court agrees with Plaintiff.

24 In granting the Stay Discovery Motion, Judge Cobb determined that standing
 25 was the threshold issue that required resolution before addressing both the Strike and
 26 Suppression Motions. (ECF No. 38 at 8.) Judge Cobb found staying discovery was
 27 proper until Plaintiff's special interrogatories were adequately answered. (*Id.* at 7-9.) In
 28 support of his decision, Judge Cobb cites to *United States v. Approximately 1,784,000*

1 *Contraband Cigarettes*, Case No. C12-5992 BHS, 2016 WL 6084938, *5 (W.D. Wash.
 2 Oct. 18, 2016) (“The Court agrees that it would unjustly burden and prejudice the
 3 [g]overnment to allow Claimants to pursue discovery when they had yet failed to file
 4 necessary pleadings under the supplemental rules.”), and *United States v.
 5 Approximately \$658,830 in U.S. Currency*, Case No. 2:11-cv-00967 MCE KJN PS, 2011
 6 WL 5241311, *1 (E.D. Cal. Oct. 31, 2011) (“The [court] stays the government’s
 7 obligation to respond to [claimant’s] discovery request . . . until 21 days after [claimant]
 8 serves the government with responses to the government’s special interrogatories.”).
 9 (*Id.*)

10 Determining whether Claimants have standing is the first and most critical
 11 question in this action. “A claimant’s standing to contest a forfeiture proceeding is a
 12 threshold matter that must be resolved before addressing the merits of the asset
 13 forfeiture claim.” *United States v. Various Coins*, Case No. 3:11-cv-00387-MA, 2013 WL
 14 1183312, *2 (D. Or. Mar. 21, 2013) (citing *United States v. 5208 Los Franciscos Way*,
 15 385 F.3d 1187 (9th Cir. 2004). As Judge Cobb recognized (see ECF No. 38 at 8), good
 16 cause exists here to grant the Stay Discovery Motion until standing to pursue the
 17 ownership interest has been resolved. See *Leyva v. Certified Grocers of Cal., Ltd.*, 593
 18 F.2d 857, 863 (9th Cir. 1979) (“A trial court may, with propriety, find it is efficient for its
 19 own docket and the fairest course for the parties to enter a stay of an action before it,
 20 pending resolution of independent proceedings which bear upon the case.”). The Court
 21 finds that Judge Cobb did not clearly err in granting the Stay Discovery Motion.

22 **IV. STRIKE MOTION**

23 Plaintiff’s Strike Motion under Supp. R. G(8)(c)(i)(A) seeks to “conditionally” strike
 24 Porcelli’s claim for failing to comply with Supp. R. G(6). Predicated on the Compel
 25 Motion being granted—as the Court has done *supra*—Plaintiff requests that their Strike
 26 Motion “be conditionally granted, or that a decision . . . be deferred, both pending a
 27 sufficient but brief period of time for [Porcelli] to come into compliance with Supp. R.
 28 ///

1 G(6) by adequately supplementing his response." (ECF No. 29 at 2.) For the reasons
 2 discussed below, the Court denies Plaintiff's Strike Motion without prejudice.

3 The Court recognizes that its determination that Judge Cobb did not clearly err in
 4 granting the Compel Motion can be construed to imply Porcelli failed to comply with
 5 Rule G(6). However, a claimant is typically afforded "one or even several opportunities
 6 to cure defective Rule G(6) responses." *United States v. Real Prop. Located at 17 Coon*
 7 *Creek Rd.*, 787 F.3d 968, 973 (9th. Cir. 2015). Moreover, Advisory Committee Notes to
 8 Rule G(8) cautions courts that when a Rule G(8)(c)(i)(A) motion to strike is brought, "the
 9 court should strike a claim . . . *only if* satisfied that an opportunity should not be afforded
 10 to cure the defects." *Id.* (emphasis added). Here, the Court is not satisfied, and Porcelli
 11 should be afforded an opportunity to adequately respond to Plaintiff's special
 12 interrogatories.

13 In sum, Plaintiff's Strike Motion is denied without prejudice. Until Claimants'
 14 standing to pursue the ownership interest is resolved, the Court denies Claimants'
 15 Suppression Motion without prejudice, and denies Plaintiff's Stay Motion as moot.

16 **V. CONCLUSION**

17 The Court notes that the parties made several arguments and cited to several
 18 cases not discussed above. The Court has reviewed these arguments and cases and
 19 determines that they do not warrant discussion as they do not affect the outcome of the
 20 motions before the Court.

21 It is therefore ordered that Claimants' Objection (ECF No. 39) to Magistrate
 22 Judge William G. Cobb's order is overruled.

23 It is further ordered that the United States' motion to conditionally strike the claim
 24 of Claimant Oak Porcelli (ECF No. 29) is denied without prejudice.

25 It is further ordered that Claimants' motion to suppress evidence (ECF No. 14) is
 26 denied without prejudice.

27 ///

28 ///

1 It is further ordered that the United States' motion to stay (ECF No. 17)
2 Claimants' motion to suppress evidence is denied as moot.

DATED THIS 23rd Day of November 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE